UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/7/Add.3
4 December 1989

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 19 OF THE CONVENTION

Initial reports of States parties due in 1989

Addendum

TUNISIA

[25 October 1989]

GE.89-14115/1651B

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INTRODUCTION

1. This introduction to Tunisia's initial report on the implementation of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment will contain a brief discussion of the general background against which Tunisia adopted the Convention.

2. A broad-ranging movement was begun with the replacement of the Head of the Executive Supreme Court on 7 September 1987 in conformity with the rules set forth in the Tunisian Constitution; in a very short period of time this movement brought about significant achievements in strengthening citizens' rights and freedoms, consolidating state institutions and liberalizing political life.

3. The declaration proclaiming this change is a genuine manifesto for a free and democratic society and for a pluralistic State that respects human rights:

> "Our people is worthy of advanced and institutionalized political life effectively based on a multi-party system and a plurality of people's organizations ...".
>
> "We shall ensure that the law is properly applied so as to eliminate any iniquity or injustice ...".
>
> (Excerpt from the Declaration of 7 November 1987).

4. The declaration ushered in a new era in Tunisian history. The change afforded Tunisians an opportunity to become reconciled with each other and with the State and to institute a new approach to dealing with matters of State and with Tunisia's future. The change was also particularly aimed at making the qualitative effort needed for the principle of respect for rights and freedoms recognized both in the Tunisian Constitution and in the treaties ratified by Tunisia to become a concrete rule.

5. In addition to action taken to strengthen democratic institutions and action to improve the social and political climate in general, a number of reforms and measures have been initiated to meet concern in guaranteeing rights and freedoms and respect for the dignity and physical integrity of the individual. These reforms and measures, which will be discussed at length in the section on the articles of the Convention, may be summed up as follows:

- The elimination of the State Security Court and the office of Attorney-General of the Republic (Act No. 87-79 and Act No. 87-80 of 29 December 1987);
- The release, through successive decisions to grant pardons and reductions of sentence, of 9,700 prisoners in various categories;
- The adoption of new provisions in the Penal Code limiting the period of custody and pre-trial detention;
- The new regulations for prison terms that take into consideration the rules and rights recognized in the international conventions;

- The authorization granted to open a section of the "Amnesty International" organization at Tunis;

- The elimination of the penalty of forced labour from the Penal Code and the Code of Military Justice, which is replaced by the penalty of imprisonment (Act No. 89-23 of 27 February 1989);

- The adoption and enactment of the Amnesty Law (Act No.89-63 of 3 July 1989), which applies to all persons convicted or being prosecuted for offences committed on political or trade union grounds before 7 November 1987.

6. In addition to these special measures, an entire process of revision of legal texts has begun, in particular of the Penal Code, the Code of Criminal Procedure, the lawyers' statute and the judges' statute. There are special committees to revise certain basic texts in order to eliminate anything contrary to the new aspirations of Tunisian society and the ideals of liberty and democracy and to develop and implement the concept of a State governed by the rule of law and the principle of respect for human rights and fundamental freedoms.

7. It should also be noted that this basic change has enlisted the support of all Tunisians of all persuasions. A "National Agreement" representing a platform setting out the principles on which there is a consensus was signed on the date of the first anniversary of the change by various political and social groupings. The Agreement is aimed in particular at safeguarding the foundations of national sovereignty, the republican form of government, effective pluralism and the guarantee of respect for human rights.

8. The Tunisian Human Rights League (LTDH), which co-operated in preparing the National Agreement and was also consulted on several important bills, has on several occasions expressed its support for the action undertaken after the 7 November 1987 change. Indeed, constant and close co-operation has been established between the authorities and the LTDH.

9. Such was the general background for the adoption and enactment of the law ratifying, with no reservations whatsoever, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

I. GENERAL INFORMATION ON THE TUNISIAN LEGAL SYSTEM

10. The Tunisian Constitution of 1959, the highest law in the Tunisian legal system, which embodies the republican régime proclaimed in 1957 as being "the best guarantee for respect of human rights and for equality of the rights and duties of all citizens ..." stated in the preamble that the will of the Tunisian people is "... to remain faithful to human values, which constitute the common heritage of peoples attached to human dignity, justice and liberty ...".

11. In articles 5 et seq., the Tunisian Constitution also guarantees fundamental human freedoms and rights:

The inviolability of the human being;

Freedom of conscience;

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Freedom of worship;

Equality of all citizens before the law;

Freedom of opinion, expression, the press, publication, assembly and association;

The right of unionization;

The inviolability of the home and the secrecy of correspondence;

The right to move freely inside and outside of Tunisian territory;

The presumption of innocence until guilt is established in accordance with a procedure offering the guarantees indispensable for a defence.

12. It should be stressed that the proclamation of these rights in the Constitution is in itself a guarantee. Since constitutional provisions stand at the head of the hierarchy of legal rules, it would not be possible for any text to contravene them without being declared unconstitutional.

13. The effectiveness of the system of fundamental human rights guarantees provided by the Constitution can be seen in the procedure for revising constitutional and related provisions and also in the powers accorded to the authority that sets forth the rules governing these rights and the way in which this is done.

14. Regarding first of all the procedure for revision, the Constitution itself contains rules for providing a maximum of guarantees for the revision of constitutional provisions. Articles 72 to 74 of the Constitution indicate that the initiative for revising the Constitution lies with the President of the Republic or to at least one third of the members of the Chamber of Deputies.

15. The Chamber may deliberate on the proposed revision only after a resolution for a revision has been adopted by an absolute majority and after a special commission has determined and studied the purpose. The revision proposal must be adopted by the Chamber of Deputies by a two-thirds majority after two readings separated by a period of at least three months.

16. The complexity of the revision procedure thus described is an effective guarantee for preserving the rights and freedoms recognized in the Constitution.

17. As to the laws governing these rights, the Tunisian Constitution, revised in 1976, makes this a reserved area. The Chamber of Deputies, i.e. the legislature alone, is entitled to enact rules governing these rights.

18. Thus, certain matters which directly or indirectly affect human rights are covered by the law, such as the general terms and conditions giving effect to the Constitution, nationality, the status of individuals, obligations, procedure before the various types of court, the determination of crimes and offences and the applicable penalties, amnesty, the fundamental principles of the ownerships and of property titles, education, public health, labour and social security rights and the fundamental guarantees given to civilian and military officials.

19. In addition, certain fundamental human rights can be governed only by an organizational law and not by an ordinary law. There is a special procedure for the enactment of organizational laws. A bill for an organizational law may be submitted for the consideration by the Chamber of Deputies only on expiry of a period of 15 days after it has been submitted. It is voted on by an absolute majority. It should be noted that for ordinary laws, no period is required before the deliberations, and adoption entails an absolute majority.

20. The rights governed by organizational laws relate in particular to freedom of opinion, expression, the press, publication, assembly and association, the right of unionization, inviolability of the home, secrecy of correspondence, the right to move freely inside, establish domicile and leave Tunisian territory, organizations of the judiciary, etc. ...

21. In addition to codes and ordinary laws governing exercise of the rights set forth in the Constitution, the Tunisian State is a party to a number of international conventions recognizing and guaranteeing certain rights bound up with the principle of respect for the dignity of the human person. The following are among the treaties and conventions ratified by Tunisia:

International Covenant on Economic, Social and Cultural Rights;

International Covenant on Civil and Political Rights;

Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery;

International Convention on the Elimination of All Forms of Racial Discrimination;

ILO Forced Labour Convention (No. 29);

Protocol relating to the Status of Refugees, adopted in New York in 1967;

Convention relating to the Status of Stateless Persons, concluded in New York in 1954;

International Convention on the Suppression and Punishment of the Crime of Apartheid;

Convention on the Elimination of All Forms of Discrimination against Women;

Convention on the Political Rights of Women;

Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes against Humanity.

22. Tunisian law contains no special procedures for incorporating an international convention into the legal system. However, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, like any other international convention or treaty, is considered, from the time it is ratified by the Chamber of Deputies, not only as an integral part of Tunisian legislation, but also its provisions have legal standing higher

than that of the laws. Article 32 of the Constitution stipulates that "Treaties are binding only after they are ratified. Duly ratified treaties have authority superior to the laws.". This clearly indicates the will of the Tunisian authorities to place duly ratified treaties in second position in the hierarchy of legal norms: after the Constitution and before the laws.

23. As a result, laws that are contrary to a duly ratified convention cannot be enforced. Similarly, internal laws enacted after the ratification of a convention must conform to the provisions of that convention.

24. Tunisian courts are bound to enforce the provisions of a duly ratified convention and to disregard a law that is contrary to it.

25. The provisions of a ratified convention may normally be invoked before the courts with no special procedure, because under Tunisian law the ratification of a convention is itself equivalent to incorporation in the internal legal system.

26. In the endeavour to strengthen legal institutions and to arouse the consciousness of laymen and legal practitioners and deepen their sense of respect for the rule of the law, whatever their source, it was decided in 1987 to provide broader knowledge of international legal norms by publishing international conventions ratified by Tunisia in the Journal Officiel. Thus, the Convention against Torture was published in the Journal Officiel de la Republique Tunisienne, No. 72 of 25 October 1988.

27. The judiciary is autonomous and is independent of any other authority. Judges are subject to no authority other than the law in the performance of their duties.

28. The organization of the judiciary in Tunisia is based on the principle of the separation of powers. Chapter IV of the Constitution is entitled "The judicial power". Article 65 stipulates that "The judicial authority is independent; judges are subject to no authority other than the law in the performance of their duties".

29. Organizational Act No. 67-29 of 14 July 1967, which contains the judges' statute, stipulates that judges are independent. Article 16 provides that "the exercise of the duties of judge is incompatible with the exercise of any public duties and any other professional or salaried activity". Similarly, article 17 of the Act states that "the exercise of the duties of judges is incompatible with the exercise of any elective mandate". Outside of their functions, they cannot be required to perform any public service other than military service (art. 20).

30. The same Act determines the composition and attributions of the Judicial Service Commission, which is responsible for ensuring application of the guarantees accorded to judges in matters of appointment, advancement, transfer and disciplinary measures.

31. Judges enjoy protection from prosecution; article 22 prohibits the arrest or prosecution of a judge for a crime or offence without prior authorization by the Judicial Service Commission for the branch concerned.

32. Article 23 stipulates that judges shall render justice impartially, with no consideration for persons or interests. They cannot make judgements based on any personal knowledge they might have of a case.

33. In addition to these guarantees to ensure an independent and impartial system of justice, the law enables persons who are the subject of legal proceedings to challenge a judge for reasons indicating that his impartiality might be in doubt. Grounds for challenge are provided by the Code of Civil and Commercial Procedure (arts. 248 et seq.). Challenge is also provided for in criminal matters (Code of Criminal Procedure, art. 296).

34. Tunisian positive law establishes no discrimination among persons being tried. The rules on the court jurisdiction are defined on the basis of functional competence and territorial competence.

35. Under the rules for functional competence, law suits are assigned according to subject-matter. Territorial competence assigns jurisdiction according to district. The two rules complement each other.

36. Since the system of justice is a public service, it is accessible to all, with no distinction whatsoever. When a court declares itself competent to judge a lawsuit submitted to it, it bases itself exclusively on the law. Equality before the courts is also strengthened by the legal assistance granted to persons in need.

37. In addition, to safeguard proper functioning of the system of justice and provide remedies in cases where a procedure has been improperly conducted or a judicial error committed, Tunisian judicial law establishes the principle of two jurisdictions.

38. The court system laid down by the Constitution is based on the principle of two jurisdictions: judicial and administrative. Article 69 of the Constitution provides for the establishment of a Council of State, one of whose organs, the Administrative Tribunal, judges the Administration.

39. Article 2 of the Act of 1 June 1972 relating to the Administrative Tribunal stipulates that this court "rules on lawsuits against the Administration". Nevertheless, the article adds that the law courts will remain competent to hear in first instance administrative litigation involving compensation. Thus the Administrative Tribunal is competent to rule in first and final instance on appeals for annulment in cases of misuse of authority, against all acts by central and regional administrative authorities or by local communities (the communes) and public administrative institutions (art. 3). In addition, it has jurisdiction in matters of administrative litigation involving compensation, at the appeals and cassation levels.

40. Appeals on grounds of abuse of power are aimed at ensuring respect for the laws by the executive authorities, in conformity with the legislation and regulations in force and with general principles of law.

41. The statute of judges for the Administrative Tribunal is similar to the statute of judges for the judicial system as far as independence and impartiality are concerned.

42. In civil matters, the rules of functional competence provide for very broad competence of the courts so that "everyone will have the right to have his cause heard".

43. The Code of Civil and Commercial Procedure defines those cases over which courts may assume jurisdiction.

44. Article 2 of the Code recognizes the jurisdiction of courts in all civil and commercial litigation between any persons residing in Tunisia, whatever their nationality.

45. If there is any connection with Tunisian territory, the courts may assume jurisdiction: for example, proceedings against a foreigner residing outside Tunisian territory, if the proceedings concern an accident in Tunisia or a contract drawn up, executed or due to be executed in Tunisia.

46. In addition, they hear proceedings against Tunisians residing abroad.

47. Tunisian courts may also assume jurisdiction if a foreigner agrees to be tried by them, even if there is no connection with Tunisia to warrant the jurisdiction of Tunisian courts.

48. Tunisian courts may also deciare sentences handed down abroad to be enforceable.

49. The Code of Civil and Commercial Procedure authorizes anyone who has not been summoned in a case to file opposition as a third party against any decision that jeopardizes his rights (art. 168). Furthermore, it allows any third party concerned by legal proceedings to represent his interests at any stage in the proceedings.

50. In criminal cases, if the Public Prosecutor, who is responsible for initiating the public prosecution, decides to close the case, the injured party may itself initiate the public prosecution under its own responsibility.

51. Persons under the jurisdiction of the Administrative Tribunal are entitled to appeal for annulment, on grounds of misuse of authority, of the administrative acts of certain administrative authorities, as defined by article 3 of the Act of 1 June 1972. The acts in question are acts by the central and regional administrative authorities, public local authorities and public administrative institutions.

52. The decisions of the Administrative Tribunal have extended the Tribunal's competence in the interest of persons under its jurisdiction. Accordingly, the administrative judge has not restricted himself to a theoretical concept of administrative acts, as might be concluded from article 3 mentioned above; he has chosen to deal with administrative acts on a practical basis: if a body acts as a public authority, its acts may be taken before the Administrative Tribunal.

53. The administrative judge is not competent to hear appeals against administrative contracts; however, he has assumed jurisdiction over appeals for the cancellation of specific acts ensuing from the contract, which frequently take the form of unilateral administrative acts.

54. Lastly, the Act of 1 June 1972 prohibits appeals for the annulment of administrative decrees issued by the President of the Republic. However, the administrative judge has annulled individual acts decided on the basis of administrative decrees, when a plea of illegality is submitted.

55. These considerations show that, with the number of appeal procedures available, positive law allows all individuals to assert their rights.

56. As to the remedies for persons who allege that they have been the victims of torture or other cruel, inhuman or degrading treatment, they are identical to ordinary law remedies.

57. A complaint or charge is sent to the Public Prosecutor who decides how to deal with it, i.e. whether to initiate a public prosecution or to close the matter. However, a decision by the Public Prosecutor to close the matter does not prevent the injured party from initiating a public prosecution under his own responsibility. If he does so, he may either request an initiating order or directly summon the accused person before the court.

58. The injured party is also entitled to bring a civil action which may be heard in conjunction with the public prosecution or separately in the civil court. In this case, judgement is suspended until final judgement has been handed down in the public proceeding, once it has been initiated.

59. Chapter III of the Tunisian Penal Code deals with offences committed by public officials or similar persons in the exercise of, or while performing their duties. Section V of the chapter concerns misuse of authority or dereliction of duty while in public office.

60. For example, violence against persons is punishable by five years' imprisonment and a fine.

61. Unlawful entry into a private home is punishable by one year's imprisonment and a fine.

62. Unlawful infringement of another person's freedom, violence and towards ill-treatment of accused persons, witnesses or experts to obtain confessions or statements are punishable by five years' imprisonment and a fine. Threats of violence or ill-treatment carry a maximum prison sentence of six months.

63. Refusal to administer justice to parties on the grounds that the law is silent or obscure is punishable by a fine.

64. Compelling persons to engage in forced labour or perform work unlawfully is punishable by two years' imprisonment and a fine.

65. Additional sentences may be incurred by public officials or similar persons who have committed one of the offences described above; the penalties include a ban on employment in the civil service and on a career in certain other professions, a ban on wearing official honorary distinctions and on exercising the right to vote.

66. In short, these are the penalties for offences committed by public officials and similar persons in the performance of their duties. They are classed as serious offences, as they fall into the category of offences punishable by imprisonment of 15 days to 5 years or a fine of over 60 dinars.

67. Serious offences are first of all tried by courts of first instance and on appeal by appeal courts. On further appeal the sentence or decision is taken by the Court of Cassation, which decides on the legal merits of the case and either confirms the decision or annuls it and sends it back to be heard by the same court, although by different judges, or by another court of the same instance.

68. In practice, courts have had to hear complaints against the authors of violence and ill-treatment committed during the inquiry or the pre-trial proceedings and more generally while persons have been under arrest. In some cases police officers have been sentenced when it is proved that they have employed violence. In November 1987 a law amended some articles of the Code of Criminal Procedure concerning police custody and pre-trial detention (Act No. 87-70 of 26 November 1987) so as to make available to the victims of such violence a means of proving and if necessary certifying that violence or ill-treatment had been used. The provisions of the new Act grant persons placed in police custody the right to request a medical examination during or on expiry of the period of custody. Police officers are requested to mention any such request in the judicial record.

69. Moreover, since November 1987 there has been a marked improvement in the conditions of detention and imprisonment in prisons.

70. The principle that no one may be deprived of his liberty except in application of a judgement or by virtue of a warrant of arrest or of commitment was strengthened by Decree No. 88-1876 of 14 November 1988, which laid down special regulations for prisons.

71. In addition, firm instructions have been given to law enforcement officials and police personnel to perform their duties strictly within the law and actively to safeguard, under all circumstances, the rights and freedoms of citizens and to guarantee respect for human dignity and physical integrity.

72. There have been a number of practical difficulties with the implementation of the new provisions on police custody, (restricted to 4 days), and the regulations on imprisonment, mainly on account of a lack of training and the inadequate means available to the prison administration. However, those difficulties have rapidly been overcome.

73. Other difficulties, attributable to problems of interpretation and to certain contradictions between the new provisions and the laws predating the reform movement that began in November 1987, will also be solved once the overall reformulation and review, more particularly of the Penal Code and the Code of Criminal Procedure, has been completed. These Codes contain some provisions that are still incompatible with the new trends regarding rights and freedoms and respect for human dignity and physical integrity.

II. INFORMATION RELATING TO THE ARTICLES IN PART I OF THE CONVENTION

Article 2

74. Pursuant to this article, each State Party shall take effective legislative, administrative, judicial or other measures to prevent acts of torture in any territory under its jurisdiction. No exceptional circumstances whatsoever and no order from a superior officer or public authority may be invoked as a justification of torture. Tunisian positive law is deeply concerned to protect the physical integrity of the individual, in particular against certain breaches of duty by public officials, and has severely punished such practices. A number of cases covered by the Penal Code will be examined in the commentaries on article 4 of the Convention.

75. As a result of the changes that took place on 7 November 1987, forced labour has been deleted from the Penal Code and replaced by custodial penalties. The Act that eliminated forced labour (Act No. 89-23 of 27 February 1989) not only eliminated that penalty in the future but replaced it by custodial penalties for persons already sentenced to forced labour prior to the promulgation of the Act.

76. Similarly, following the changes, conditions of detention in prison have acquired particular importance. Accordingly, Decree No. 88-1876 of 14 November 1988, relating to special regulations on prisons, introduced new provisions designed to improve conditions of imprisonment and to focus attention on re-educating and rehabilitating prisoners by using methods to reform and reintegrate offenders within society, through the practical organization of life in prisons and in observation centres.

77. Accordingly, prisons have been divided into the following categories, based on the seriousness of the penalty: (1) main prisons; (2) regional prisons; (3) semi-open prisons.

78. The main prisons take in persons sentenced to five years or more.

79. The regional prisons take in persons sentenced to less than five years' imprisonment and those in pre-trial detention.

80. Semi-open prisons are reserved for persons sentenced to corrective labour and those sentenced to prison for minor offences or misdemeanours (art. 2 of the Decree of 4 November 1988).

81. Prison inmates are classed on the basis of age, sex and penal status: convicts, pre-trial detainees, first offenders or recidivists (art. 7 of the Decree).

82. Female prisoners are in principle held in special prisons, failing which special blocks are set aside for them. In either case, they are supervised by female warders under the authority of the prison governor (art. 8 of the Decree). The children of female prisoners may remain with them until the age of three. They may remain longer at the mother's request and provided the prison authorities agree (art. 9).

83. In addition, the Decree guarantees prisoners the right to an individual bed. Prisoners are kept together both during the day and at night, and may be isolated only if required by the pre-trial proceedings or for their own safety. Under no circumstances may two detainees be isolated in a single cell. Individual cells must possess elementary amenities and sanitation (art. 10).

84. Article 14 of the Decree sets out the rights of prisoners. They include:

The right to receive care in hospital or in the prison infirmary;

The right to hygiene and cleanliness;

The right to visits;

The right to talk with lawyers in premises set aside for that purpose, and in the absence of prison warders, where detainees in pre-trial detention and convicts whose sentences are open to appeal are concerned;

The right to employment that takes into account the prisoner's job and skills, in exchange for remuneration fixed on the basis of the resources available and in accordance with the legal working day;

The right to at least one hour's exercise each day.

85. It should be noted that under the 1960 Decree governing imprisonment, prisoners could be compelled to work. As a result of the new 1988 Decree, work is now a right the prisoner is free to exercise or not. Prohibition from working, on the other hand, has now become a possible disciplinary punishment.

86. As to discipline, prisoners are afforded safeguards. They may be punished only on the decision of a disciplinary council comprising a member representing the prisoners and a social worker. Prisoners are allowed to present their own defence and to appeal against their punishment to the higher authority. Punishment decided by the disciplinary council may range from a ban of not more than two weeks on receiving the "prison basket" and parcels, to solitary confinement not exceeding 10 days.

87. As regards exceptional circumstances that may be invoked as a justification for torture, it should be emphasized that there are no such provisions in Tunisian law. Article 46 of the Constitution empowers the President to adopt exceptional measures, after consultation with the Prime Minister and the Chairman of the Chamber of Deputies and for a limited period, "in the event of an imminent threat endangering the institutions of the Republic, national security and independence and hampering the normal process of government". However, under no circumstances do the regulations adopted pursuant to this article authorize torture or violence against persons. The state of emergency, last declared in 1984 on the basis of these regulations, empowers no officials to employ torture or violence.

88. Similarly, the law contains no provision allowing State officials to order or carry out torture or acts of violence against persons. The penalties laid down in the Penal Code (cf. para. 94 et seq.) for officials who do so demonstrate that Tunisian legislation punishes such practices quite severely.

Article 3

89. This article concerns the prohibition on expelling or extraditing persons to another State where there are substantial grounds for believing that he would be in danger of being subjected to torture or violence.

90. Extradition is regulated by the Code of Criminal Procedure, and article 17 of the Constitution prohibits the extradition of political refugees.

91. Article 308 of the Code of Criminal Procedure stipulates that "except where provision is made to the contrary by treaty, the conditions, procedure and effects of extradition shall be regulated by this chapter" (chapter VIII of the Code of Criminal Procedure). The reservation made in this article concerns the bilateral treaties for mutual judicial assistance that Tunisia has signed with a large number of countries and also international conventions that deal with extradition, such as the Convention against Torture. Article 308 merely reaffirms the principle that ratified conventions take precedence over internal law, which was examined in the first part of this report.

92. Consequently article 3 of the Convention applies in full and supplements the provisions of article 313 of the Code of Criminal Procedure, which prohibits extradition "if the crime or offence is of a political nature or if the circumstances indicate that the extradition has been requested for political motives".

Article 4

93. Article 4 requires the State party to ensure that acts of torture are offences under its criminal law and are punishable by appropriate penalties which take into account their grave nature.

94. In this regard, the Tunisian Penal Code contains a series of articles dealing with misuse of authority by public officials or similar persons:

(a) Article 101 stipulates a penalty of five years' imprisonment and a fine for any public official or similar person who, in the exercise of his duties, uses violence or causes it to be used against any person without just cause;

(b) The same penalty is incurred by a public official who unlawfully interferes with the personal liberty of others, or who perpetrates or causes to be perpetrated violence or ill-treatment against an accused person, witness or expert in order to extract a confession or statement from them (art. 103);

(c) The threat of violence or ill-treatment by a public official is punishable by six months' imprisonment;

(d) A penalty of two years' imprisonment and a fine is incurred by a public official or similar person who, resorting to one of the practices mentioned in article 103, has employed persons on work other than that of public utility ordered by the Government (art. 105).

95. In addition, public officials found guilty of attacks on personal freedom, violence towards persons or torture may be debarred from exercising certain rights such as employment in the civil service, a career in certain professions, the right to vote, the right to carry weapons or all official honorary distinctions (art. 115).

96. The person's status as a public official thus has a bearing on the determination of the penalty when he has employed violence. This status is to some extent an aggravating factor from which the legislature draws inferences.

97. These penalties are thus applied in cases of violence, torture or cruel treatment committed during an inquiry or investigation and in general when individuals are deprived of their freedom.

98. In November 1987, a law amended certain articles of the Code of Criminal Procedure regarding police custody and pre-trial detention (Act No. 87-70 of 26 November 1987). The new provisions grant persons placed in the custody of police officers the right to request a medical examination during or on expiry of the period of custody. Police officers are required to mention any such request in the judicial record. The purpose of this provision is to give persons held in police custody an opportunity to have any violence during custody placed on record and, in that event, to secure enforcement of the penalties provided for by the Penal Code, as described above. This provision has a definite deterrent effect.

99. The Penal Code also provides for the punishment of violence other than in the cases quoted above, for example in the kidnapping or abduction of individuals, intentional violence, threats of violence and involuntary violence.

(a) Violence in cases of kidnapping or abduction: new article 237, as amended in 1977, provides that if a physical disability or illness results from this crime, the perpetrator is punishable with imprisonment for life. The same is true in cases of arbitrary arrest, detention or restraint which result in physical disability or illness (new art. 251). The penalty is 10 to 20 years' imprisonment when the illness or physical disability is the result of the hijacking of a means of land, air or sea transport (new art. 306 bis);

(b) Intentional violence: The Penal Code makes the following distinction, by order of gravity:

- Assaults or acts of violence which have no serious or lasting effects on the health of the victim; the perpetrators of such violent acts are liable to 15 days' imprisonment and a fine (art. 319);

- Violent acts which have serious consequences for the health of the victims.

In the case of wounds, blows or any other act of violence, the penalty is one year's imprisonment and a fine. In the event of premeditation, the penalty shall be three years' imprisonment. If the acts of violence result in mutilation, loss of the use of a limb, disfigurement, infirmity or permanent disability not exceeding 20 per cent, the penalty shall be five years' imprisonment. If the disability exceeds 20 per cent, the penalty shall be

six years' imprisonment (new art. 219). In addition, the mere fact of participating in a brawl resulting in serious consequences for the victim is punishable by six months' imprisonment (art. 220);

(c) Threats of violence: Anyone who, by any means whatsoever, threatens another with an attack which would carry a criminal penalty, is liable to six months' to five years' imprisonment and a fine. The penalty is doubled if the threats are accompanied by orders or by conditions, even if made verbally (art. 222, as amended in 1977). A person who threatens another with a weapon, even without intending to use it, is liable to one year's imprisonment and a fine (art. 223);

(d) Involuntary violence: In the case of involuntary violence, the perpetrator is still punished, but less severely (one year's imprisonment and a fine) (art. 225).

In addition, the Penal Code provides for heavier penalties when the victims are minors or legally incapacitated persons. An additional cause of aggravation of the penalty is the fact that the offender is a parent or grandparent of the victim or a person having authority over him (art. 224).

Article 5

100. Article 5 requires the State Party to establish its jurisdiction over offences involving acts of torture when the offences are committed in its territory or on board a ship or aircraft registered with its authorities, when the offender is one of its nationals, when the victim is a national of that State and it considers it appropriate to consider the case, or when the offender is present in its territory and has not been extradited. The last paragraph of the article adds that the Convention does not exclude any criminal jurisdiction exercised in accordance with internal law.

101. The general rules of jurisdiction apply in the particular case of acts of torture or violence. The Tunisian courts have jurisdiction over any offence committed on Tunisian territory or on board a ship or aircraft registered in Tunisia or when the offender is a Tunisian national.

102. In cases where a Tunisian national is the victim of acts of torture committed abroad by non-Tunisians and also in cases where an alien is arrested in Tunisia for an offence committed abroad and no extradition proceedings are instituted, the Tunisian courts may establish their jurisdiction under the provisions of article 5 of the Convention, which would thus complement the general rules of jurisdiction set out in the Code of Criminal Procedure.

Article 6

103. Under this article the State Party which has taken into custody a person alleged to have committed an offence referred to in article 4 of the Convention is required to make a preliminary inquiry in accordance with its laws and to keep the person in custody only for such time as is necessary to enable any criminal or extradition proceedings to be instituted. It is also required to assist the person in custody in communicating with the nearest representative of the State of which he is a national and to notify immediately the States concerned, i.e. the State in which the offence was

committed and the States of which the offender and victim are nationals, of the fact that such person is in custody and of the circumstances which warrant his detention and to report the findings of the preliminary inquiry to them, indicating whether it intends to exercise jurisdiction.

104. It should be noted that the general rules of procedure apply in this matter in the absence of any request for extradition.

105. Under this procedure and where a person is alleged to have committed acts of torture which may be qualified as a crime, the Public Prosecutor requires the examining magistrate to begin an inquiry immediately.

106. The accused person is summoned for questioning and, if he fails to appear, an arrest warrant is issued by the examining magistrate. The warrant indicates the nature of the charge and the legislation applicable and instructs any law-enforcement official to effect the arrest.

107. Within three days of the questioning, the examining magistrate may, on the authorization of the Public Prosecutor, issue a warrant of commitment if the offence is punishable by imprisonment or carries a more severe penalty.

108. On his first appearance, the person in custody has the right not to reply except in the presence of a lawyer of his choice. After this first appearance he is allowed to communicate at any time with his lawyer.

109. It follows from these general rules that an alien taken into custody may communicate with the appropriate representative of his State, even in the absence of an express provision to this effect. In practice, such communication is the rule.

110. The Code of Criminal Procedure, which does not contain provision for the communications referred to in article 6, paragraphs 3 and 4, of the Convention, may be supplemented by the incorporation of these provisions of the Convention into the rules of procedure of Tunisian law, as indicated in the first part of this report.

111. None the less, the conventions on mutual legal assistance which Tunisia has signed with many countries generally include rules governing the communications referred to in paragraphs 3 and 4 of the article.

Article 7

112. Article 7 provides that the State Party in the territory under whose jurisdiction a person who has committed acts of torture is found shall, if it does not extradite him, submit the case to its competent authorities for the purpose of prosecution. The procedures and sentences shall be the same as for ordinary offences of a serious nature and shall in no way be less stringent than those which apply in cases where the offence has been committed in the territory of the State or when the offender or victim is a national of that State.

113. It has already been pointed out in the comments on article 5 that the provisions of the Convention in this matter extend Tunisian jurisdiction to cases where only the victim is Tunisian and to cases where the offender is found in Tunisian territory but not extradited.

114. Under Tunisian criminal law the use of violence by a public official or similar person against any individual is treated as a serious offence, especially when it results in wounds, disfigurement or permanent disability. The same applies to assaults and other acts of violence perpetrated by an ordinary citizen against another when they lead to permanent disability equal to or exceeding 20 per cent.

115. The Department of Public Prosecutions represented by the Public Prosecutor establishes whether an offence has been committed and receives accusations by public officials or private individuals, as well as complaints by injured parties (art. 26 of the Code of Criminal Procedure). The Public Prosecutor initiates the proceedings and brings the accused to court if the acts in question are serious offences or infractions, and orders the opening of an inquiry if the acts are of a criminal nature (art. 47 of the Code).

116. The examining magistrate then questions the accused. He acquaints him with the charges against him and the legislation applicable to such offences, and hears statements by the accused after informing him of his right not to reply except in the presence of a lawyer of his choice. A note of this warning is entered in the record. If no choice is made, when the accused person is indicted and requests legal assistance, a lawyer shall automatically be appointed for him by the president of the court (art. 69 of the Code).

117. The indicted prisoner is allowed to communicate at any time with his lawyer (art. 70).

118. The accused's file is made available to the defence counsel 24 hours prior to the questioning. The defence counsel may make a statement once authorized to do so by the examining magistrate. If this is denied, a note of the fact is made in the record of the proceedings. Note is also made of statements by the defence counsel.

119. Lastly, the report is then drawn up and read out to the indicted person, marked and initialled and signed by the judge, the clerk of the court, the person appearing and, where appropriate, by the lawyer and interpreter (art. 72).

120. The items produced in evidence are shown to the indicted person for him to state whether he recognizes them and to make any comments thereon which he believes useful.

121. If the indicted person has become mentally deranged since the offence was committed, he is given a medical examination and granted a stay of judgement until such time as he is again able to defend himself (arts. 76 and 77).

122. In the case of acts which constitute serious offences, the Public Prosecutor may decide not to order an examination and merely receive statements by the accused, who in the course of the questioning or the period of custody enjoys the necessary safeguards. The person in custody or one of his parents, children, brothers, sisters or his spouse may request a medical examination. A note of this request is made in the record, which must always indicate the date and time when the period of custody began and ended. Similarly, the date and time when any questioning begins and ends must be indicated. The record must be initialled by the person held in custody; in the event of refusal, this fact is noted, together with the reasons (art. 13 bis. of the Code of Criminal Procedure, inserted under the Act of 26 November 1987).

123. Tunisian law is stringent in punishing acts of violence or torture, but nevertheless safeguards the rights of the accused, both in proceedings instituted by the Department of Public Prosecutions and in the investigation or judgement. The procedures and sentences are the same whatever the place of the offence and the nationality of the offender.

Article 8

124. Article 8 provides that the offences referred to in the Convention shall be deemed to be included in any extradition treaty existing between States Parties. Such offences shall be recognized as extraditable offences, whether or not the States Parties make extradition conditional on the existence of a treaty. For the purpose of extradition, the offences referred to in the Convention shall be treated as if they had been committed not only in the place in which they occurred but also in the territories of the States required to establish their jurisdiction in accordance with article 5, paragraph 1.

125. The Tunisian Code of Criminal Procedure treats acts of torture, violence and inhuman treatment as extraditable offences. The only exception, laid down by the Constitution and incorporated in the Code of Criminal Procedure, concerns requests for the extradition of political refugees.

126. The conditions, procedure and effects of extradition are governed by the Code of Criminal Procedure unless, of course, special treaty provisions apply (art. 308). The exception relates both to bilateral conventions on mutual judicial assistance and to international conventions. In accordance with the principle of the primacy of treaties over internal laws, the bilateral conventions on mutual judicial assistance take precedence over the provisions of the Code. However, since the provisions of article 8 of the Convention against Torture are provisions of an international convention and thus have a higher legal force, they prevail both over the provisions of bilateral treaties and over internal laws.

127. Consequently it is the provisions of this article 8 which apply and take precedence over any contrary provisions either of the conventions on mutual judicial assistance or of the Code of Criminal Procedure.

Article 9

128. Pursuant to this article, States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of any of the offences covered by the Convention and in conformity with any treaties on mutual judicial assistance that may exist between them.

129. In Tunisia, extradition is not conditional upon the existence of a treaty and Tunisia generally provides all applicant countries with any useful information on persons who have committed offences either in Tunisia or abroad. Articles 331 et seq. of the Code of Criminal Procedure give examples of the type of mutual judicial assistance that may be provided by the Tunisian authorities even to States with which it is not bound by a treaty. Article 331 stipulates as follows:

> "As far as non-political criminal proceedings in a foreign country are concerned, letters rogatory issued by foreign authorities shall be transmitted through diplomatic channels to the Ministry of Justice. Such

letters rogatory shall be executed, if appropriate, in accordance with Tunisian law. In cases of emergency they may be transmitted directly between the judicial authorities of the two States."

130. In addition, pursuant to article 333 of the same Code, "In criminal proceedings under investigation abroad, whenever the foreign Government requires evidence or documents that are in the hands of the Tunisian authorities, it shall submit a request through diplomatic channels. The request shall be complied with unless there are any special reasons for not doing so, and the applicant Government shall undertake to return the evidence and documents as soon as possible".

Article 10

131. Under this article States Parties are obliged to include the prohibition against torture in the training programmes of civil and military law enforcement personnel and in the rules or instructions issued in regard to the duties and functions of any such person.

132. It should be pointed out that in Tunisia, in addition to basic technical training, the various training schools for police, national guard, prison and rehabilitation personnel provide training on general criminological theory and criminal science and on the legal principles and rules governing criminal procedure and the reporting of offences. The teaching is provided by law professors and judges and also deals with the powers of each category of personnel, its responsibilities in the exercise of its duties, in particular the obligation to protect the dignity and physical integrity of citizens and the penalties incurred in the event of failure to fulfil the obligation.

133. Furthermore, the professional code of the security forces, as set out in Act No. 82-70 of 6 August 1982, lays down the obligation for the above-mentioned personnel to "ensure, in accordance with the specific powers vested in each of them, that the law is respected by all, and if appropriate, to ascertain any offences committed" and "in particular to refrain from any intercessions, mediation or steps whatsoever involving acts that might constitute moral or material pressure on another person or might be construed as being so".

134. In addition, the circulars frequently issued to police and national guard personnel contain firm instructions strictly to observe the law in the performance of their duties and to respect the commitments made by Tunisia regarding the prohibition on any form of violence or inhuman treatment of persons, whether free or under arrest.

135. In hospitals, forensic services are provided by specialized medical personnel who carry out medical examinations of the corpses of victims of violence or torture. Forensic medicine departments work in close liaison with the legal authorities.

136. Hospitals report any patients bearing signs of violence and submit reports on the condition of the victims and the nature of the violence inflicted on them. The Public Prosecutor, before whom the case is brought subsequent to the complaint, orders criminal proceedings in accordance with the law.

137. As from the 1989-1990 school year a new subject will be taught in all secondary schools, covering human rights in general, in order to develop a keen awareness among young people of the universal principles of respect for human dignity and physical integrity.

Article 11

138. Article 11 requires States to keep under systematic review interrogation rules, instructions, methods and practices as well as arrangements for the custody and treatment of persons subjected to any form of arrest, detention or imprisonment with a view to preventing any cases of torture.

139. Act No. 87-70 of 26 November 1987, mentioned above, amended the Code of Criminal Procedure and laid down detailed regulations covering custody and questioning, which come under the responsibility of judicial police officers. Pursuant to the new article 13 bis of the Code, officers in charge of police stations, national guard or Customs officers acting in the capacity of judicial police officers may not hold a suspect for more than four days, even in cases of a crime or flagrante delicto and are required to notify the Public Prosecutor.

> "The Public Prosecutor may take a decision in writing initially to extend the period for a further four days, and in the event of absolute necessity, for a further period of only two days.
>
> During custody or on completion of custody, the person held in custody or one of his parents, children, sisters, brothers or his spouse may request a medical examination. A note of this request is made in the record which must always indicate the date and time when custody began and ended. Similarly, the date and time when any questioning begins and ends must be indicated.
>
> The record must be initialled by the person held in custody; in the event of refusal, this fact is noted, together with the reasons."

141. The above provisions, together with those that existed prior to the 1987 law and laid down in detail procedural arrangements for prosecution, are such as to avert any risk of abuse and facilitate monitoring activities performed by the monitoring bodies of either the Ministry of the Interior or the Ministry of Justice.

Article 12

142. This article requires States Parties to proceed to a prompt and impartial investigation wherever there is reasonable ground to believe that an act of torture has been committed in any territory under its jurisdiction.

143. Responsibility for monitoring and investigations is vested in the bodies mentioned in the commentary on article 11, i.e. the Inspectorate-General of the Ministry of the Interior and the Department of Criminal Affairs, in conjunction with the Inspectorate-General, both of which come under the Ministry of Justice.

144. The Ministry of the Interior's monitoring organizations carry out periodic inspections of police and national guard stations and of prisons to ensure, in particular, that they are run in accordance with the procedures and powers laid down by the law. If any anomalies or abuses are detected, an investigation must be carried out and the findings set out in a report to the Minister of the Interior. The Minister brings the guilty official before a disciplinary council which imposes a penalty ranging from a reprimand to dismissal, without prejudice to any criminal proceedindgs that may be initiated against him. In practice, police and national guard officers have been given severe prison sentences for employing violence against citizens, and the sentences have entailed definitive dismissal.

145. The Department of Criminal Affairs of the Ministry of Justice is the focal point for complaints and charges relating to unlawful acts or misuse of powers by the Ministry's officials and, in conjunction with the Inspectorate-General of Justice, conducts inquiries and submits reports to the Minister, who asks the Department of Public Prosecutions to initiate criminal proceedings in cases of torture.

146. Complaints and charges against other public officials in respect of acts committed in the exercise of their duties, together with complaints about other persons, are also submitted to the Ministry of Justice. If there are sufficient grounds for the complaints or charges, the Public Prosecutor initiates criminal proceedings.

Article 13

147. Under this article each State Party is obliged to ensure that any individual who alleges he has been subjected to torture has the right to complain to, and to have his case promptly and impartially examined by, its competent authorities and to ensure that the complainant and witnesses are protected against all ill-treatment or intimidation.

148. The judicial authorities responsible for receiving complaints are, in general: the Public Prosecutor and officers of justice, i.e. district judges, police superintendents, officers and officers-in-charge of police stations and officers, non-commissioned officers and officers-in-charge of national guard stations in their capacity as officers of the judicial police.

149. Officers of justice immediately inform the Public Prosecutor of any offence brought to their knowledge in the exercise of their duties and transmit to him any relevant information and reports. Should a complainant be exposed to danger of any sort on account of his complaint, they take all the necessary measures to protect him.

Article 14

150. This article makes it compulsory for States Parties to ensure in their legal system that the victim of an act of torture or his dependants obtains redress and has an enforceable right to fair and adequate compensation. This obligation has no effect on the right of the victim or other persons to compensation under national law.

151. Article 1 of the Code of Criminal Procedure establishes the principle that any offence shall entail the initiation of a public prosecution to determine the penalties and, if harm has been caused, the initiation of a civil action for redress. As already explained in the first part of this report, the party who has suffered an act of torture may initiate the public prosecution under his own responsibility; however, he may also bring a civil action, either in conjunction with the public prosecution or separately in a civil court. The civil action may be brought by all persons who have directly suffered personal injury on account of the offence (art. 7 of the Code of Criminal Procedure).

152. In the case of a civil action the plaintiff has to submit a written request, signed by him or by his representative, to either the Public Prosecutor, the investigating magistrate or the court before which the case is brought, as appropriate. Legal costs are waived (art. 39 of the Code of Criminal Procedure).

153. It should be pointed out that if the victim is destitute he may be granted legal aid. Legal aid covers all procedural costs, including lawyers' fees.

154. Furthermore, article 49 of the professional code of the forces of law and order (Act No. 82-70) of 6 August 1982 stipulates that "if a member of the forces of law and order is prosecuted by a third party for professional misconduct, the Administration must meet the cost of any civil sentence against him." Victims are thus certain to obtain redress.

Article 15

155. Pursuant to this article, statements obtained through torture may not be invoked as evidence in any proceedings, except against a person accused of torture.

156. Under Tunisian legislation, a confession obtained from a person against his will may not be used as evidence against him. Article 432 of the Code of Obligations and Contracts stipulates that "confessions must be free and lucid; any factors that vitiate consent also vitiate the confession." Article 51 of the Code stipulates that any violence likely to induce either physical suffering or deep mental disturbance or fear of subjecting the victim's person, honour or property to appreciable harm constitute absence of consent. Accordingly, statements obtained from a person through the use of violence or torture may not be used as evidence against him.

157. It is also worth noting the provisions of the new article 13 bis of the Code of Criminal Procedure, mentioned earlier, which require officers of the judicial police to allow persons in custody to undergo a medical examination if they or one of their relatives so request, and mention the request in the judicial record. The object of this provision is to provide a means of ascertaining whether the person in custody has been the victim of violence or torture. Should the medical examination reveal traces of violence or of torture, the judicial record will be invalid and nothing in it may be used against the victim of the violence, on the grounds of failure to comply with the procedural rules and in particular article 155 of the Code, whereby "the judicial record is valid as proof only if it is in due and proper form and if

the author, in the performance of his duties, provides information on a matter within his competence and which he has personally seen or heard". In addition, regulations governing evidence require a confession, like any other evidence, to be left freely to the appraisal of the judge, who decides on the basis of his innermost conviction (arts. 150 and 152 of the Code). Consequently, if a judge is convinced that an accused person's confession has been obtained by violence or torture, he will avoid convicting him on the basis of that confession.

Article 16

158. Article 16 prohibits all acts of cruel, inhuman or degrading treatment or punishment which do not amount to torture as defined in article 1 of the Convention, when such acts are committed by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity.

159. Paragraph 2 of the article contains a general provision under which international instruments or national laws prohibiting cruel, inhuman or degrading treatment or punishment or relating to extradition or expulsion remain in force.

160. At this point it is worth noting the contents of article 103 of the Penal Code as already examined in the comments on article 4 of the Convention.

> "Any public official who unlawfully interferes with the personal liberty of others, or who perpetrates or causes to be perpetrated violence or ill-treatment against an accused person, witness or expert in order to extract a confession or statement from them shall incur a penalty of five years' imprisonment.
>
> Where the mere threat of violence or ill-treatment is concerned, the sentence shall be reduced to six months' imprisonment."

161. The Tunisian Penal Code none the less stipulates severe sentences for any threat of violence or ill-treatment. Under article 222 of the Code, a penalty of six months' to five years' imprisonment and a fine shall be incurred "by anyone who, by any means whatsoever, threatens another with an attack which would carry a criminal penalty. The penalty is doubled if the threats are accompanied by orders or by conditions, even if made verbally."

162. Similarly, article 223 of the Code stipulates that "a person who threatens another with a weapon, even without intending to use it, is liable to one years' imprisonment and a fine."

163. Kidnapping or hijacking is punishable by 10 years' imprisonment. However, if the kidnapping or hijacking is carried out with the use of weapons or with a false uniform or under a false identity or on false orders from the authorities, the penalty is extended to imprisonment for life. The crimes in question carry the death penalty if they cause death, either directly or indirectly (art. 237 of the Penal Code).

164. Other offences against personal freedom and physical integrity are arbitrary arrest, detention or restraint and are punishable by 10 years' imprisonment. The penalty is doubled if the arrest, detention or restraint has involved ill-treatment or threats. The penalty is life imprisonment if the act is designed to threaten the physical integrity of the victim. The death penalty applies if the acts lead, either directly or indirectly, to death (art. 251 of the Penal Code).

165. Lastly, it should be recalled that, under Tunisian law, international conventions supplement both bilateral treaties and internal law and override only provisions that run counter to them.

ANNEXES */

1. Act No. 87-70 of 26 November 1987, amending certain articles of the Code of Criminal Procedure.

2. Act No. 89-23 of 27 February 1989, eliminating the punishment of forced labour.

3. Decree No. 88-1876 of 4 November 1988, concerning special regulations for prisons.

4. Circular from the Minister of Health to health personnel (in Arabic).

5. Circular from the Ministry of Education on the teaching of the activities of national human rights organizations (in Arabic).

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*/ These documents may be consulted in French and in Arabic, as received from the Tunisian Government, in the files of the Centre for Human Rights.